

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS No. 170 to 193 of 1990

with

FIRST APPEALS NO. 2527 to 2551 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

OFFICER ON SPL. DUTY (LAND ACQUISITION)

Versus

BAI KHADIJA D/O MOHMED DAVJI THROUGH HEIRS

Appearance:

FIRST APPEALS NO. 170 to 193 of 1990

Mr. P.G.Desai, Government Pleader for appellant

Mr. R.N.Shah for the claimants

Mr. S.N.Shelat, Addl. A.G. with Mr. M.G.Nagarkar for
G.I.D.C.

FIRST APPEALS NO. 2527 to 2739 of 1992

Mr. R.N.Shah for the appellants-claimants

Mr. U.A.Trivedi, A.G.P. for respondent no.1-State

Mr. S.N.Shelat, Addl.A.G. with Mr. M.G.Nagarkar for
respondent no.2 - G.I.D.C.

FIRST APPEALS NO. 2740 to 2751 of 1992

Mr. R.N.Shah for the appellants-claimants

Mr. B.D.Desai, A.G.P. for respondent no.1-State

Mr. S.N.Shelat, Addl.A.G. with Mr. M.G.Nagarkar for
respondent no.2- G.I.D.C.

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of decision: 23/12/98

ORAL COMMON JUDGEMENT

(Per : Kadri, J.)

First Appeals no.170 to 193 of 1990 are filed by the Officer on Special Duty (Land Acquisition) No.1 and First Appeals No. 2527 to 2551 of 1992 are filed by the appellants-original claimants (to be referred to as "the claimants") under section 54 of the Land Acquisition Act, 1894 ("the Act" for short) read with section 96 of the Code of Civil Procedure, 1908 challenging the common judgment and order dated January 3, 1989 passed by the learned 2nd Extra Assistant Judge, Bharuch, in Land Acquisition Reference Cases No. 39/84, 148/84 to 151/84, 153/84, 154/84, 157/84 158/84 and 161/84 to 176/84.

As all these First Appeals arise out of the common judgment and award rendered in the above-mentioned group of Land Acquisition Reference Cases and as common questions of facts and law arise in these appeals, we propose to dispose of them by this common judgment.

2. The Mines and Industries Department of Gujarat State proposed to acquire the lands of villages Gadkhol and Piraman of Ankleshwar Taluka for the purpose of extension of Ankleshwar Industrial Estate. The said proposal was approved by the State Government and notification under section 4(1) of the Act was published in the Government Gazette on October 20, 1977. An erratum or amended notification under section 4(1) of the Act was published in the Government Gazette on January 26, 1978. The owners of the acquired lands filed objections before the Land Acquisition Officer and after considering the objections, report under section 5(A)(2) of the Act was made and thereafter notification under section 6 of the Act was published in the Government

Gazette. On October 27, 1979, amended notifications under section 6 of the Act were published on 16.4.1980 and 16.10.1981. All the interested persons of the acquired lands of both the villages were served with notices under section 9(3)(4) of the Act. The claimants claimed compensation at Rs. 85,000/- per Acre before the Land Acquisition Officer in response to the notices. The Land Acquisition Officer, after taking into consideration the material placed before him made award on 26.4.1983 and awarded compensation at the rate of Rs. 30,000/- per Hectare i.e. Rs. 300/- per Are for the acquired lands of villages Gadkhol and Rs.25,000/- per Hectare i.e. Rs. 250/- per Are for the lands of village Piraman.

3. The claimants were of the opinion that compensation offered by the Land Acquisition Officer was inadequate and, therefore, they filed applications under section 18 of the Act requiring the Land Acquisition Officer to refer the applications to the District Court. Those applications were referred to the District Court, Bharuch by the Land Acquisition Officer, which were numbered as Land Acquisition Reference Cases No.39/84, 148/84 to 151/84, 153/84, 154/84, 157/84, 158/84 and 161/84 to 176/84 in the District Court, Bharuch. The claimants averred in the applications filed under section 18 of the Act that the Land Acquisition Officer had not considered the sale instances of nearby lands of the same villages while determining market value of the acquired lands as on the date of publication of notification under section 4(1) of the Act. It was claimed that the market value of the lands acquired ought to have been fixed taking into consideration the potentiality of the lands. It was stressed that the acquired lands were situated in a developed industrial area and the lands would fetch more price than offered by the Land Acquisition Officer. The claimants in all the applications claimed compensation before the Reference Court at the rate of Rs. 85,000/per Acre for their acquired lands of villages Gadkhol and Piraman. The State Government filed reply at Exh.5, inter-alia, contending that the applications filed by the claimants were misconceived and the references were barred by period of limitation. It was further averred that before the Land Acquisition Officer, the claimants had not produced reliable evidence in form of sale instances in support of their claim of compensation. It was highlighted that the claimants having failed to submit their claim before the Land Acquisition Officer in pursuance of issuance of notices under section 9 of the Act, the References for additional compensation were not maintainable in view of the provisions of section 25 of the Act. Lastly, it was averred that compensation offered

by the Land Acquisition Officer was adequate in view of the sale instances produced before him and as the claimants were not entitled to additional compensation, the References should be dismissed.

4. The acquiring body viz. Gujarat Industrial Development Corporation filed its reply in all the references at Exh.12, inter-alia, contending that the compensation offered by the Land Acquisition Officer was reasonable and proper looking to the situation of lands and market price of lands prevailing on the date of the notification issued under section 4(1) of the Act. It was contended that the amount of additional compensation claimed by the claimants was excessive and exorbitant. It was further contended by the acquiring body that the acquired lands had no facilities such as road, electricity and water and the lands were agricultural Jirayat lands and there was no development surrounding the villages of Gadkhol and Piraman. It was also contended that the acquired lands were far away from Ankleshwar Railway Station and Bus Stand and, therefore, compensation offered by the Land Acquisition Officer was adequate and reasonable and the references be dismissed.

5. On the basis of the above averments made by the claimants, the acquiring body and the Land Acquisition Officer, the Reference Court raised issues for determination at Exh.6. The claimants in support of their claim, examined one Balubhai Desaibhai Patel claimant of Land Acquisition Reference Case No. 184/84 at Exh.21. To substantiate their claim for additional compensation, the claimants produced sale instances and previous award of the Reference Court at Exh.20 rendered in Land Acquisition Reference Cases No. 229, 230 & 231 of 1978. On behalf of the appellant, no oral or documentary evidence was led before the Reference Court. The Reference Court after taking into consideration the situation of the acquired lands of villages Gadkhol and Piraman and the market value determined by previous award Exh.20, came to the conclusion that in award Exh.20 the market value of the agricultural lands of Ankleshwar town in the year 1976 was determined at the rate of Rs. 400/per Are, but the notification under section 4(1) of the Act in the present case was published in the year 1978 and, therefore, 15% rise in price of lands should be given for two years, as the notification in the present case was published after two years of publication of notification under section 4(1) of the Act, which was considered in the award Exh.20. Therefore, the Reference Court came to the conclusion that in the year 1978 market value of the acquired agricultural lands was Rs. 460/per

Are. The Reference Court further held that the acquired lands were having industrial potentiality for non-agricultural lands as well as building potentiality and they were situated in the vicinity of well developed industrial area and also were abutting on the National Highway. The Reference Court, therefore, awarded 40% price rise on the amount of Rs. 460/- per Are. After adding 40% price rise, the Reference Court came to the conclusion that the price of the acquired lands would be Rs. 604/per Are. Considering the speedy development of industrial area surrounding Ankleshwar Town, the Reference Court further added 5% more on the price of Rs.604/- and arrived at a figure of Rs. 630/- per Are by the impugned award. The Reference Court also extended statutory benefits to the claimants under sections 23(1-A), 23(2) & 28 of the Act as amended by the Amendment Act of 1984.

6. The claimants filed an application Exh.39 under Order-47 Rule-1 of the Code of Civil Procedure, 1908 before the Reference Court for review of the common judgment and award dated 3rd January, 1989 passed in the above-mentioned group of Land Reference Cases. The claimants contended in their application for review that the Reference Court had committed an error in determining market value of the lands acquired at Rs. 630/- per Are. They contended that the Reference Court had given price rise at the rate of 15% per annum and considering the period of two years, the market value of lands acquired would come to Rs. 520/- per Are. It was further contended that if 40% rise for industrial area is added to the amount of Rs. 520/-, it would come to Rs. 728/per Are. It was further pointed out by the claimants that on the amount of Rs. 728/- per Are, the Reference Court should have added 5% more because of speedy development in the surrounding area of the acquired lands and the total amount would come to Rs. 765/- per Are and not Rs. 630/- per Are as per the award drawn by the Reference Court. The said applications was heard by the learned 2nd Extra Assistant Judge and after hearing the learned Advocates for the parties, the Reference Court passed following order on January 10, 1989 :-

"Heard the learned Advocates on the point
in the judgment para-16.

The notification u/s.4 in the Ex.20 is of
the year 1976 whereas the amended notification
u/s 4 in the proceedings is of the year 1978. 15
percent increase per year on the market value at
Ex.20 i.e. Rs.400/- per Are has been considered.

So increase @ 15 percent per year for two years i.e. 1976 to 1978 per Are is added it comes to Rs. 520/- instead of Rs. 460/- which is calculation as well as typed mistake. It should, therefore, be read as Rs. 520/- instead of Rs. 460/-. Now, if 40% price rise for the reasonable assessment is calculated on the said price of Rs. 520/-, it would come to Rs. 208/- so the total amount would be Rs. 728/- while it has been calculated and typed Rs. 604/-, so Rs.728/- would be read instead of Rs. 604/- and 5% more increase is added over the said amount would come to Rs. 765/-. So, Rs. 765/- be read in place of Rs. 765/- per Are in paras 16 and 18 of the judgment instead of Rs. 630/- and the calculation be made on the basis of Rs. 765/- per Are in the schedule."

7. Thus, the Reference Court after hearing review applications, allowed the same and determined the market value of the acquired lands of villages Gadkhol and Piraman at Rs. 765/- per Are. The above determination of market value of the acquired lands of villages Gadkhol and Piraman has been challenged by the appellants in this group of appeals and the claimants by filing cross-appeals, have challenged the above impugned common judgment and award and have claimed that the market value of the acquired lands should have been determined at the rate of Rs. 1000/- per Are.

8. The learned Government Pleader Mr. P.G.Desai assisted by learned Assistant Government Pleaders M/s. U.A.Trivedi and B.D.Desai appearing on behalf of the appellants State of Gujarat submitted that the Reference Court has erred in enhancing compensation while determining the market value of villages Gadkhol and Piraman at the rate of Rs. 765/- per Are. It is claimed by the learned Counsel for the appellants that villages Gadkhol and Piraman were far away from Ankleshwar Town and the Reference Court has not considered that there was no industrial development surrounding the lands of the two villages. It is further highlighted by the learned Counsel for the appellants that the award Exh.20 on which reliance was placed by the Reference Court related to non-agricultural lands and the acquired lands which were subject matter of award Exh.20, were situated in Ankleshwar town itself and, therefore, award Exh.20 was not comparable to the acquired lands of villages Gadkhol and Piraman. It is stressed by the learned Counsel for the appellants that the lands which were subject matter

of award Exh.20 were not having same fertility and were not comparable to the lands of villages Gadkhol and Piraman. It is further contended by the learned Counsel for the appellant that the Reference Court erred in treating the amended notification under section 4(1) of the Act as relevant date for determination of market value of the acquired lands. In this connection, the learned Counsel for the appellant invited our attention to the decisions rendered in (i) State of Gujarat through the Assistant Collector, Baroda v. Pirojsha P. Contractor and another, I.L.R. 1972, Gujarat 45, and (ii) Radhey Shyam v. Haryana State, AIR 1981 Punjab and Haryana 57. The learned Counsel for the appellant also contended that the Reference Court erred in awarding interest on the additional amount and the amount of solatium under section 28 of the Act. It is asserted by the learned Counsel for the appellant that the Reference Court in the schedule attached to the common judgment and award in Column 6 had awarded 12% increase under section 23(1-A) of the Act for the period from 26.1.1978 to 26.4.1983 i.e. for 5 years and 3 months, which is erroneous. The learned Counsel further contended that the claimants were only entitled to additional amount under section 23(1-A) of the Act at the rate of 12% from the date of notification under section 4(1) of the Act i.e. October 20, 1977 to the date of taking over possession of the lands acquired and not till the date of making of the award by the Land Acquisition Officer. Lastly, it was submitted by the learned Counsel for the appellant that the compensation offered by the Land Acquisition Officer was just, adequate and reasonable and, therefore, the appeals should be allowed and the cross-appeals filed by the claimants should be dismissed.

8. Learned Counsel for the acquiring body Mr. M.G.Nagarkar has adopted the arguments advanced on behalf of the appellant and has further contended that the award Exh.20 was not at all comparable to the lands under acquisition, as the lands under acquisition were situated far away from Ankleshwar Town and no industrial development has taken place in villages Gadkhol and Piraman. It is contended by the learned Counsel for the acquiring body that the Reference Court erred in giving rise in price of lands for two years at the rate of 15% per annum. The learned Counsel for the acquiring body also submitted that the Reference Court erred in giving rise of 40% on the ground of potentiality and industrial development surrounding the area of acquired lands and further erred in giving 5% rise because of speedy development. The learned Counsel for the acquiring body lastly submitted that the compensation awarded by the

Land ACquisition Officer was adequate and the appeals filed by the State of Gujarat should be allowed and the appeals filed by the claimants for enhancement of compensation be dismissed.

9. Learned Advocate Mr. M.R.Shah, who appeared for Mr. R.N.Shah learned Counsel for the claimants has vehemently submitted that the award at Exh.20, which was relied on by the Reference Court for determination of market value of the acquired lands was comparable and as the High Court in First Appeal No. 372/80 had determined market value of the non-agricultural lands of Town Ankleshwar, which were subject matter of award Exh.20 at the rate of 25/- per sq.mt., the market value of the acquired lands of village Gadkhol and Piraman should be determined at Rs. 1000/- per Are. Learned Counsel for the claimants highlighted that because of industrial development which had taken place surrounding Ankleshwar Township, there was heavy pressure on the lands of nearby villages Gadkhol and Piraman and therefore, prices of lands of both the villages had increased and the Reference Court had not taken into consideration those distinctive features and not determined the market value of the acquired lands at Rs.1000/- per Are. It is submitted by the learned Counsel for the claimants that the lands which were subject matter of award Exh.20 were most comparable lands with the acquired lands of village Gadkhol and Piraman and, therefore, the Reference Court has committed no error in placing reliance on the award Exh.20 for determination of market value of the acquired lands. The learned Counsel for the claimants stressed that the acquiring body and the Land Acquisition Officer had failed to lead any evidence before the Reference Court and, therefore, the Reference Court was justified in placing reliance on the evidence produced by the claimants in support of their case for enhancement of compensation. Lastly, it was submitted by the learned Counsel for the claimants that enhancement of compensation claimed by the claimants in cross-appeals at the rate of Rs. 1000/- per Are is reasonable and, therefore, the appeals filed by the claimants should be allowed and the appeals filed by the appellants should be dismissed.

10. Learned Counsel for the appellants and the claimants have taken us through the entire evidence on record including the oral evidence of one of the claimants, namely, Balubhai Desaibhai Patel, who was examined at Exh.21. This witness in his oral testimony before the Reference Court has described the situation of the acquired lands. From his evidence, it becomes clear

that the old and new national highways towards Mumbai and Ahmedabad pass through lands of villages Gadkhol and Piraman. The railway track also passes through the acquired lands. As per the oral testimony of the witness Exh.21, Ankleshwar - Rajpipala road also passes through lands of villages Gadkhol and Ankleshwar-Andada and the road towards Valia - Dediapada from Ankleshwar also passes through the lands of village Piraman. Therefore, from the oral testimony of the witness Exh.21, it becomes evident that villages Gadkhol and Piraman are connected by a road with Ankleshwar and other surrounding villages. Railway facility is also available to the residents of both the villages. The evidence of this witness also shows that prior to publication of notification under section 4(1) of the Act, private industries had been established near the acquired lands. O.N.G.C. residential colony was situated in the lands of village Gadkhol since 1962. Near village Gadkhol, there were factories of Indian Pipe and Pre-cone Pipe, Nalanda Housing Society, D.G.Nagar Central School and over-bridge to Ankleshwar. The witness asserted that factory of Gujarat Cable was constructed in the lands of village Gadkhol in the year 1970. With regard to the situation of village Piraman, witness Balubhai Patel Exh.21 deposed that the factories like Bright Bar, Ranchhodrai Pulse Mill, Carboard factory, Sugar factory and Dinesh Mill had established their industries prior to issuance of notification under section 4(1) of the Act in the lands of village Piraman. On the northern side of village Piraman, construction activities had started and Mission School and Church were also there. The witness has stated that village Piraman was situated at a distance of one Kilometer from Ankleshwar Highway. The witness claimed that due to development on the northern side, octroi limits of Ankleshwar Town are extended and octroi naka was placed on the lands of village Piraman. It was claimed by this witness that the lands of villages Piraman and Gadkhol had building potentiality prior to issuance of notification under section 4(1) of the Act. It is further claimed by the witness that the lands of villages Gadkhol and Piraman are similarly situated and also having same fertility.

11. During the oral testimony of this witness, award Exh.20 was produced before the Court. The witness described the situation of the acquired lands which were subject matter of award Exh.20 and gave comparison of the acquired lands of award Exh.20 and the present lands which are the subject matter of the appeals. During the cross-examination, the witness stated that he had not maintained any accounts of agricultural income. During

the searching cross-examination of the witness by the appellant, no material was brought to dislodge his testimony in examination-in-chief. From the evidence of this witness, it becomes apparent that industrial development had taken place prior to publication of notification under section 4(1) of the Act and the limits of Ankleshwar Town were extended near the villages of Godkhal and Piraman. It is also borne out from the evidence of this witness that prior to issuance of notification under section 4(1) of the Act, many industries were established near the acquired lands and, therefore, the acquired lands were having building potentiality.

12. It is well settled legal principle that previous judgments and awards of the Reference Court, if they relate to similarly situated adjacent lands and which have become final provide good guidance in determining the market value of the lands acquired subsequently. There is no doubt that, a judgment of a court in a land acquisition case determining the market value of a land in the vicinity of the acquired lands even though not inter partes, could be admitted in evidence either as an instance or one from which the market value of the acquired land could be deduced or inferred. For a judgment relating to value of land to be admitted in evidence either as an instance or as one from which the market value of the acquired land could be inferred or deduced, it must have been a previous judgment of court and as an instance, it must have been provided by the person relying upon such judgment by adducing evidence aliunde that due regard being given to all attendant facts and circumstances it could furnish the basis for determining the market value of the acquired land. The basis of the valuation as found by a competent court with regard to the neighbouring land which has become final has to be taken into consideration for determining the just compensation for lands acquired subsequently. The award passed by the Land Acquisition Officer may serve as a basis to determine the compensation, but the order passed by the civil court on reference under section 18 of the Act which has become final definitely binds both parties with regard to the price that was prevailing in that area.

13. Bearing in mind the principles laid down as stated above by catena of decisions of Apex Court, we propose to examine whether the award Exh.20 provides good guidance for determining the market price of the acquired lands. By award Exh.20, the lands of Ankleshwar Town came to be acquired for the public purpose for providing

100p road for construction of an overbridge. The notification under section 4(1) of the Act was published in the Government Gazette on July 8, 1976. The Land Acquisition Officer by his award dated July 12, 1978 offered compensation for non-agricultural land of Survey No. 446 at the rate of Rs. 230/- per Are and for agricultural land bearing survey no. 451 at the rate of Rs. 210/- per Are. The claimants of the acquired lands of award Exh.20 filed references under section 18 before the District Court at Bharuch being Land Acquisition Reference Cases No. 229, 230 & 231 of 1970. The learned District Judge by his common judgment and award dated July 31, 1979 had determined the market value of the acquired lands of Town Ankleshwar at the rate of Rs. 1000/- per Are with regard to non-agricultural lands and Rs. 400/- per Are for agricultural lands. It must be borne in mind that acquired lands were outside the municipal limits. The claimants of Land Acquisition Reference Case No.229/78 had filed First Appeal No. 372/80 in the High Court for enhancement of compensation, as they were of the opinion that the market value of their non-agricultural lands should have been determined at the rate of Rs. 2700/- per Are. The High Court (Coram : S.M.Soni, as he then was and K.R.Vyas,JJ.) by judgment and order dated November 20, 1991 allowed the appeal partly by determining the market value of the acquired non-agricultural land of survey no. 446 of Ankleshwar at the rate of Rs. 25/- per sq.mt. i.e. Rs.2500/- per Are. It must be stated that the claimants of Land Reference Cases No. 230/78 and 231/78 whose agricultural lands were acquired situated at Ankleshwar, had not filed appeals challenging the determination of market value of their agricultural lands at the rate of Rs. 400/- per Are by notification under section 4(1) of the Act issued on July 8, 1976. Therefore, determination of market value of the acquired lands which were agricultural lands of village Ankleshwars had become final.

14. In the present appeals, lands which are subject matter of acquisition for expansion of Ankleshwar Industrial Estate came to be acquired by notification under section 4(1) of the Act dated October 20, 1977. In the notification dated October 20, 1977, area of survey no.461 of village Piraman was mentioned as 43 Ares and 52 sq.mts. An erratum was issued and the notification dated October 20, 1977 was amended by a subsequent notification which was published on January 1, 1978 and the acquired area of survey no.461 was corrected as 43 Ares and 50 sq.mts. By issuing the amended notification, no substantial changes in the earlier notification were

made. The amended notification was issued just to mention correct measurement of the acquired land bearing survey no.461 of village Piraman. In State of Gujarat vs. Pirojsha P.Contractors (Supra) a contention was raised by the learned Counsel for the claimants that the date of publication of the acquisition notification under section 4(1) of the Act for the purpose of ascertaining the market value of the acquired land should be taken to be the date of publication of the erratum. The Division Bench of this Court rejected the contention and ruled that, "in our opinion, when the area covered by the first notification was, the entire area under lease-deed exhibit 31 and when an erratum was necessary to clarify the error, the date of publication of the erratum cannot be taken to be the date of the publication of the acquisition notification for the purpose of determining the market value of the land". In our opinion, the erratum in the present acquisition proceeding was issued to clarify the measurement of Survey No. 461 of village Piraman. By the publication of erratum, on the contrary, some less area viz. two sq.meters, was acquired. Therefore, in view of the settled legal position, we are of the opinion that the Reference Court erred in taking relevant date for determination of the market value of the acquired lands to be the date on which the amended notification was published. Therefore, the finding of the Reference Court that the relevant date for determination of the market value of the acquired lands was 26.1.1978, requires to be set aside and it is held that the relevant date for determination of market value would be the date of publication of first notification under section 4(1) of the Act which is October 20, 1977.

15. The submission of the learned Counsel for the claimants that the award Exh.20 was challenged in the High Court in First Appeal No. 372 of 1980 and the High Court had determined the market value of the acquired non-agricultural land of Ankleshwar at the rate of Rs. 2500/- per Are i.e. Rs. 25/- per sq.mt. and, therefore, the claimants should be awarded compensation at the rate of Rs. 10/per sq.mt. deserves to be rejected. The lands which were subject matter of First Appeal No. 372 of 1980 were non-agricultural lands situated in developed area of Ankleshwar Town itself; whereas the acquired lands of present appeals are situated in the villages of Gadkhol and Piraman. In determining the market value of agricultural lands, the sale instances or previous awards of non-agricultural lands which are situated in an urban area will not furnish the correct market value of agricultural lands. In the present acquisition, large area of lands

comprising 61 Hectares 22 Ares and 13 sq.mts. was acquired for the expansion of G.I.D.C. Ankleshwar; whereas the lands which were subject matter of First Appeal No.372 of 1980 were of small area i.e. 10 Ares and 57 sq.mts. It is settled legal principle that for the determination of market value of large area of land, reliance cannot be placed on the sale instances or awards relating to small area of land. Therefore, in our view, the determination of market value of non-agricultural lands of First Appeal No. 372 of 1980 cannot be compared or relied on for the purpose of ascertainment of market value of the acquired agricultural lands which are the subject matter of the present appeals. The determination of the market value of the agricultural lands of award Exh.20 which had become final, in our view, provides good guidance for the ascertainment of market value of the agricultural lands of the present appeals.

16. It is evident from the oral testimony adduced in the Reference Court that due to heavy industrialisation and acquisition of lands of surrounding villages, the importance on the lands of villages Gadkhol and Piraman had increased. Therefore, in our opinion, the market value of the agricultural lands of village Gadkhol and Piraman can be safely determined at the rate of Rs. 450/- per Are in the year 1976. We should not lose sight of the fact that determination of market value of non-agricultural land by award Exh.20 was arrived at Rs.1000/- per Are in the year 1976. Therefore, the market value of agricultural lands of villages Gadkhol and Piraman can be ascertained at the rate of Rs. 450/per Are.

17. As noted earlier, notification under section 4(1) of the Act in award Exh.20 was published on July 8, 1976 and the notification under section 4(1) of the Act was published on October 20,1977 in the present appeals and, therefore, there was a gap of one year and three months between publication of the two notifications. The Reference Court had given price rise of 15% for two years but, in view of the above decision rendered in State of Gujarat v. Pirojsha P.Contractor (supra) that the relevant date for determination of compensation is the date of publication of the first notification, we hold that price rise of 20% should be given to the market value which was determined for agricultural lands by award Exh.20 taking into consideration the gap of one year and three months between the two notifications. Therefore, the price rise of one year and three months would come to Rs. 90/- per sq.Are. The market value of agricultural lands would thus come to Rs. 540/-, as on

the date of publication of notification under section 4(1) of the Act.

18. Witness Balubhai Desaibhai Patel Exh.21 had deposed that many industries in villages Gadkhol and Piraman had started prior to publication of notification under section 4(1) of the Act. The evidence of this witness was not challenged during the cross-examination by the appellant. Therefore, it becomes evident that the industrial activities had already started in both the villages prior to publication of notification under section 4(1) of the Act. It is a settled legal principle that in ascertaining market value of the acquired land, potentiality is to be taken into consideration. There is ample evidence on record of this case that prior to issuance of notification under section 4(1) of the Act, various industries were already established in the villages and G.I.D.C. had acquired vast tracts of lands of different villages in the surrounding area of Ankleshwar town. Therefore, looking to the potentiality of the acquired lands, in our opinion, 40% rise deserves to be given to the amount of Rs. 540/-. Adding 40% rise of potentiality of the acquired lands, the total amount would come to Rs. 540 + 216 i.e. Rs. 756/-. As we have given rise of potentiality at 40%, some amount will have to be deducted towards the development of the lands, which would normally be 1/3rd of the amount of 40%. We have given rise of Rs. 216/towards potentiality and, therefore, an amount of Rs. 72/- will have to be deducted towards development charge of the land in question. Deducting the amount of 1/3rd i.e. Rs.756 -72 in our view = Rs. 684/- would be the market value of the acquired lands of villages Gadkhol and Piraman can be ascertained at Rs.684/-, which is rounded-up at the figure of Rs.685/per Are i.e. Rs. 6.85 ps. per sq.mt. Therefore, ascertainment of market value of the acquired lands by the Reference Court at Rs.765/- per Are deserves to be modified and we hold that the market value of the acquired lands on the date of publication of notification under section 4(1) of the Act i.e. 20th October, 1977, was Rs. 685/- per Are.

18. The submission of the learned Counsel for the appellant that the Reference Court errd in awarding rise of 12% on the additional amount from the date of publication of notification under section 4(1) of the Act i.e. 26.1.1978 till 26.3.1984, deserves to be accepted. We have noticed that in the schedule attached to the common judgment and award, the Reference Court has awarded additional compensation at the rate of 12% on the market value from 26.1.1978 to 26.4.1983. We have

already held earlier that the relevant date of ascertainment of market value is the date of first notification under section 4(1) of the Act which is October 20, 1977. Therefore, the claimants would be entitled to 12% as provided under section 23(1-A) of the Act from the date of first notification i.e. October 20, 1977 to the date of taking over possession of the lands acquired. Therefore, the common judgment and award and the schedule attached to it deserves to be modified to that extent.

19. The learned Counsel for the appellant also submitted that the Reference Court has awarded interest on the amount of solatium, which is erroneous. The submission of learned Counsel for the appellant deserves to be accepted. This is not permissible in view of the decision of the Supreme Court rendered in the case of State of Maharashtra v. Maharau Srawan Hatkar, JT. 1995(2) SC 583. The pertinent observations made by the Supreme Court in Para-7 of the reported decision are as under :-

"It would thus be seen that the additional amounts envisaged under sub-ss.(1-A) and (2) of S.23 are not part of the component of the compensation awarded under sub-s.(1) of s.23 of the Act. They are only in addition to the market value of the land. The payment of interest also is only consequential to the enhancement of the compensation. In a case where the Court has not enhanced the compensation on reference, the Court is devoid of power to award any interest under s.28 or the spreading of payment of interest for one year from the date of taking possession at 9% and 15% thereafter till date of payment into the court as envisaged under the proviso."

In view of the above-referred to enunciation of law by the Supreme Court, operative part of the order in so far as it directs the appellants to pay interest on the amount envisaged under sections 23(1-A) & 23(2) of the Act will have to be set aside.

For the foregoing reasons, the appeals filed by the State of Gujarat are partly allowed. It is held that the market value of the acquired lands on the date of publication of the notification under section 4(1) of the Act i.e. October 20, 1977 is determined at Rs. 685/per Are of the acquired lands of villages Gadkhol and Piraman. The appeals filed by the claimants for enhanced

compensation are dismissed; whereas the appeals filed by the State of Gujarat at partly allowed. The direction given by the Reference Court to pay interest on the amounts envisaged under sections 23(1-A) and 23(2) of the Act is set aside. The direction with regard to the amount calculated at the rate of 12% per annum under section 23(1-A) is also modified and the claimants shall be entitled to the additional amount under section 23(1-A) from 20th October, 1977 till the date of taking over possession of the acquired lands. The claimants shall be entitled to interest under section 28 of the Act from the date of taking over possession of the lands acquired at rate of 9% for the first year and on expiry of first year, at the rate of 15% per annum till the realisation or till deposit of the enhanced compensation in the Court. There shall be no order of costs in both the groups of appeals. Office is directed to draw decree in terms of this judgment.

(patel)